

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CAROLYN WOHR,

Plaintiff,

- against -

THESOUL PUBLISHING USA LLC

Defendant.

Docket No. 18-cv-7441

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Carolyn Wohr (“Wohr” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant TheSoul Publishing USA LLC (“Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of a dog playing in a water sprinkler, owned and registered by Wohr, a Texas-based photographer. Accordingly, Wohr seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Wohn is a photographer in the business of selling and licensing her photographs to media having a usual place of business at 715 Lakeland Road, Lake Dallas, Texas 75065.

6. Upon information and belief, Defendant is a domestic limited liability company duly organized and existing under the laws of the New York, with a place of business in Brooklyn, New York.

7. Upon information and belief, Defendant is registered to do business with the New York State Department of State, Division of Corporations.

8. At all times material, hereto, Defendant has owned and operated a website at the URL: <https://www.brightside.me> (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

9. On or about July 18, 2018, Wohn photographed a dog playing with a water sprinkler (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Wohn is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

11. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-116-086, with effective date of August 13, 2018 (the “086 Registration”). Attached as Exhibit C is a true and correct copy of the 086 Registration.

12. The content title of the Photograph, as it appears on the face of the 086 Registration, is “7.18.18_CarasDog.jpg.” See Exhibit C.

B. Defendant's Infringing Activities

13. Defendant ran an article on the Website entitled "*24 Audacious Pets That Were Caught Red-Pawed.*" See https://brightside.me/wonder-animals/24-audacious-pets-that-were-caught-red-pawed666610/?utm_source=fb_brightside&utm_medium=fb_organicr_5minecrafts&fbclid=IwAR14bVijWu6A0rvxi70dE5kGe5nnpQNHa-MmcbY-L6TrI_5CTDw2cw7XWk (the "Article").

14. The Article prominently featured the Photograph. A true and correct copy of the relevant portion of the Article is attached hereto as Exhibit C.

15. Defendant did not license the Photograph from Plaintiff for its Article.

16. Defendant did not have Plaintiff's permission or consent to publish the Photograph on its Website.

17. Prior to the filing of this lawsuit, there was no communication between Plaintiff and Defendant.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.

19. Defendant infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website.

20. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

21. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

22. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, i.e., in reckless disregard of Plaintiff's rights.

23. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

24. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

25. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant be ordered to remove the Photograph from the Website;
3. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

5. That Plaintiff be awarded its attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 28, 2018

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